

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of ALEJANDRO/EDWARDS-  
GAFFORD/BECKER/MESA-RODRIGUEZ,  
Minors.

UNPUBLISHED

May 22, 2014

Nos. 317740 & 318250  
Wayne Circuit Court  
Family Division  
LC No. 12-510790-NA

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Before: JANSEN, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

In this child protection proceeding, respondent-mother attempts to appeal the trial court's order of adjudication exercising jurisdiction over her four children under MCL 712A.2(b) and appeals as of right the initial order of disposition.<sup>1</sup> We affirm.

Respondent-mother first argues that the trial court erred by exercising jurisdiction over her four children based on a finding that she medically neglected an epileptic condition of her son, JDB. We disagree.

To exercise jurisdiction over the children, the trial court was required to find that a statutory basis for jurisdiction exists under MCL 712A.2(b) by a preponderance of the evidence. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "We review the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact[.]" *Id.* at 295 (citation omitted). A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake was made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Additionally, deference is given to the trial court's special opportunity to judge the weight of the evidence and the credibility of the witnesses who appear before it. See *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

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<sup>1</sup> Respondent-mother erroneously filed a claim of appeal in Docket No. 317740 from the July 19, 2013 order of adjudication. An order of adjudication may only be appealed by leave granted pursuant to MCR 3.993(B). *In re SLH, AJH, & VAH*, 277 Mich App 662, 669 n 13; 747 NW2d 547 (2008). The initial order of disposition is the first order appealable as of right under MCR 3.993(A)(1). Therefore, this Court's jurisdiction in this appeal is based on respondent-mother's claim of appeal from the initial order of disposition in Docket No. 318250.

The Department of Human Services (DHS) requested that the trial court exercise jurisdiction over the children under MCL 712A.2(b)(1) and (2).<sup>2</sup> Subsection (b)(1) provides, in relevant part, that a court has jurisdiction in proceedings concerning a juvenile under 18 years of age “[w]hose parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals . . . .” In this case, the testimony and medical records of Dr. Huq, who was involved in JDB’s medical care before he was removed from respondent-mother’s home, supports the trial court’s determination that medication was necessary to treat and control JDB’s epileptic condition.

In addition, giving deference to the trial court’s superior opportunity to determine the weight and credibility of the evidence, we find no clear error in the trial court’s finding that there was no reasonable basis for respondent-mother to discontinue the child’s medication. Respondent-mother’s reliance on Dr. Park’s recommendations is misplaced because the record discloses that Dr. Park did not become involved in JDB’s medical care until after he was removed from respondent-mother’s home and placed with paternal relatives in December 2012. Moreover, as the trial court indicated, that doctor later reversed himself and agreed that that the child required medication. Accordingly, that doctor’s views regarding medication could not have formed the basis for respondent-mother’s earlier decision to discontinue the child’s medication. Respondent-mother’s own testimony also contains contradictions regarding why she decided to wean the child off medication. Although she attributed her decision to another doctor’s alleged advice in June 2010 that the child could be weaned off his medication in two years because he would outgrow his seizures, respondent-mother testified that she began weaning the child off his medication before the two-year period expired and admitted that the child’s seizures were getting worse. Therefore, the trial court did not clearly err in finding no reasonable basis for respondent-mother’s decision to discontinue the child’s medication.

Relying on *In re Rosebush*, 195 Mich App 675, 683; 491 NW2d 633 (1992), respondent-mother asserts that she was entitled to speak for her minor child with respect to matters of medical treatment. However, child protection proceedings are intended to protect the child, *In re Brock*, 442 Mich 101, 107-108; 499 NW2d 752 (1993), and “a state is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized.” *Parham v JR*, 442 US 584, 603; 99 S Ct 2493; 61 L Ed 2d 101 (1979). Accordingly, the trial court’s findings support a determination that respondent-mother, when able to do so, neglected to provide medical care that was necessary for her child’s health. MCL 712A.2(b)(1). And because “[a] child may come within the jurisdiction of the court solely on the basis of a parent’s treatment of another child,” the trial court did not clearly err in exercising

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<sup>2</sup> Although the trial court’s order of adjudication also refers to MCL 712A.2(b)(4), it is apparent that this subsection does not apply to this case. Because only one of the grounds in MCL 712A.2(b) is needed for the trial court to exercise jurisdiction, and the record supports the trial court’s exercise of jurisdiction under MCL 712A.2(b)(1), the erroneous reference to subsection (4) is harmless. See MCR 3.902(A) (stating that the harmless error rule applies to child protection proceedings).

jurisdiction over all four children. *In re Gazella*, 264 Mich App 668, 680; 692 NW2d 708 (2005), superseded by statute on other grounds as stated in *In re Hansen*, 285 Mich App 158, 163; 774 NW2d 698 (2009), vacated on other grounds 486 Mich 1037 (2010).<sup>3</sup>

Respondent-mother also argues that there was no reason to remove the children from her home and to require supervised parenting time. We disagree.

The purpose of the dispositional hearing is to “determine what measures the court will take with respect to a child properly within its jurisdiction and, when applicable, against any adult, once the court has determined following a trial . . . that one or more of the statutory grounds alleged in the petition are true.” MCR 3.973(A). This Court has noted that any conditions imposed for a respondent’s parenting time following adjudication are left to the trial court’s sound discretion, but they are to be decided in light of the children’s best interests. *In re Laster*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket Nos. 315028 and 315521, issued December 26, 2013), slip op at 3.

Although the trial court exercised jurisdiction on the basis of respondent-mother’s medical neglect, it was also presented with other circumstances regarding the children and their parents, including evidence that respondent-mother had a substance-abuse history and was residing in a substance-abuse rehabilitation facility at the time of the dispositional hearing. Respondent-mother has not established any basis for disturbing the trial court’s decision to continue the children in relative placement, with supervised parenting time for respondent-mother. Considering that the trial court did not yet have information regarding respondent-mother’s substance abuse treatment and that it had ordered a psychological and psychiatric evaluation of respondent-mother, it would have been premature for the court to order unsupervised parenting time before receiving this additional information. Accordingly, the trial court did not err in imposing the dispositional conditions.

Affirmed.

/s/ Kathleen Jansen  
/s/ Donald S. Owens

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<sup>3</sup> Because we find that the trial court properly exercised jurisdiction over the children pursuant to MCL 712A.2(b)(1), we need not address the additional ground, MCL 712A.2(b)(2).